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application of the \$460 on the credit not being prejudicial to plaintiff because that sum was less than the agent's commission then unpaid.

[Ed. Note.—For other cases, see Principal and Agent, Cent. Dig. §§ 287, 355, 355½; Dec. Dig. § 103 (10).* 1 Va.-W. Va. Enc. Dig. 275.]

Error to Hustings Court of Richmond.

Action by the Baker Motor Vehicle Company against the Broad Street Bank and others. Judgment for plaintiff, and defendants bring error. Reversed, and judgment for defendants.

Wellford & Taylor, Geo. E. Hazz, and Scott & Buchanan, all of Richmond, for plaintiff's in error.

Munford, Hunton, Williams & Anderson and *Thos. B. Gay*, all of Richmond, for defendant in error.

HILLEARY v. HUBBELL.

[89 S. E. 111.]

June 8, 1916.

1. Evidence (§ 271 (1)*)—Hearsay—Statement of Party.—In a broker's action against another broker to recover a commission under a special contract whereby he would endeavor to sell to purchasers brought or sent by the defendant for a percentage of the commission, evidence that, after the commissioner of the revenue had advised him that he was not chargeable with the tax unless he received his commission, plaintiff reported the sale to the commissioner of the revenue and paid the tax thereon as a real estate agent, and that defendant did not do so, was inadmissible, as falling within the hearsay rule excluding all extrajudicial assertions and self-serving declarations.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1068-1070; Dec. Dig. § 271 (1).* 7 Va.-W. Va. Enc. Dig. 49.]

2. Appeal and Error (§ 1050 (2)*)—Brokers (§ 85 (1)*)—Action for Commission—Evidence.—In such case, evidence that defendant had not made a similar report to the commissioner of the revenue, the only purpose of which was to place the defendant before the jury in the light of a tax dodger notwithstanding defendant's explanation that he had no office in the county, was irrelevant and prejudicial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4154; Dec. Dig. § 1050 (2); Brokers, Cent. Dig. §§ 106, 108, 110, 115; Dec. Dig. § 85 (1).* 1 Va.-W. Va. Enc. Dig. 595.]

3. Appeal and Error (§ 1053 (6)*)—Harmless Error—Admission of Evidence—Cure by Instructions.—The error in admitting evidence that defendant had not reported the sale to the commissioner of the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

revenue, tending to place him before the jury as a tax dodger, was not cured by an instruction that the rights of the parties were not affected by whether defendant or plaintiff paid a tax on the sale, that the evidence was only to be considered in determining whether plaintiff made a sale, and that the question as to his payment of the tax and why he paid it must be determined from all the facts in issue, since the instruction was confusing and misleading and upon a wholly immaterial question.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4180; Dec. Dig. § 1053 (6); Trial, Cent. Dig. § 977.* 1 Va.-W. Va. Enc. Dig. 585.]

4. Brokers (§ 85 (1)*)—Admissibility of Evidence—Instructions in Another Case.—In a broker's action against another broker for a commission claimed to be due under a special agreement, instructions given for the plaintiff in his previous suit against the purchaser, in which he claimed the entire commission, were admissible to show that plaintiff there claimed and assumed a position entirely inconsistent with his claim and position in the present suit.

[Ed. Note.—For other cases, see Brokers, Cent. Dig. §§ 106, 108, 110, 115; Dec. Dig. § 85 (1).* 2 Va.-W. Va. Enc. Dig. 638.]

5. Appeal and Error (§ 1056 (1)*)—Harmless Error—Exclusion of Evidence.—In such case, the exclusion of such instructions was harmless error, where substantially the same result was obtained by plaintiff's own admissions and by other testimony showing that he did in fact sue the purchaser for the entire commission on the sale, and where the evidence regarding his entire conduct was fully presented to the jury.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4187, 4191, 4207; Dec. Dig. § 1056 (1).* — Va.-W. Va. Enc. Dig. 595.]

Error to Circuit Court, Fauquier County.

Action by H. M. Hubbell against H. W. Hilleary. Judgment for plaintiff, and defendant brings error. Reversed and remanded for a new trial.

John S. Barbour, of Fairfax, and *R. A. McIntyre*, of Warrenton, for plaintiff in error.

Grimsley & Miller, of Culpeper, and *G. Latham Fletcher*, of Warrenton, for defendant in error.

HOUSTON v. LYNCHBURG TRACTION & LIGHT CO.

June 8, 1916.

[89 S. E. 114.]

1. Carriers (§ 314 (5)*)—Carriage of Passengers—Actions—Declaration—Sufficiency.—A declaration averring that plaintiff was a pas-

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